

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STATE OF WASHINGTON,

Plaintiff-Appellee,

v.

THE GEO GROUP, INC.,

Defendant-Appellant.

No. 22-35027

(3:17-cv-05806-RJB)

**DEFENDANT-APPELLANT’S CONSENT MOTION TO HOLD APPEAL
IN ABEYANCE**

Pursuant to FED. R. APP. P. 27, Defendant-Appellant The GEO Group, Inc. (“GEO”), by counsel, moves to hold this appeal in abeyance and suspend the Briefing Order (Doc. 1) pending this Court’s resolution of *State of Washington v. The Geo Group, Inc.*, No. 21-36025. GEO’s counsel has consulted with counsel for Plaintiff-Appellee, the State of Washington (“the State”), and the State consents to this motion.

This is an appeal from the district court’s order granting attorneys’ fees and non-taxable costs to the State, on two grounds: (1) GEO is an “employer who pa[id] any employee less than the amounts to which such employee is entitled under or by virtue of” Washington’s Minimum Wage Act (“WMWA”); and (2) the State is a “person” that was “successful in recovering judgment for wages or salary owed to

him or her.” Order on State of Wash.’s Mot. for Att’ys’ Fees & Costs at 2, Dkt. 669 (Dec. 14, 2021).

Neither ground will obtain if this Court rules for GEO in appeal No. 21-36025. There, GEO seeks reversal in full of the district court’s judgment that it violated WMWA and is liable under unjust enrichment. Should that appeal succeed, the Court may dispose of this appeal without proceeding to whether, in this case, \$4,462,402.05 is a reasonable award of attorneys’ fees and \$191,398.07 in non-taxable costs is warranted. *Cf. RLS Assocs., LLC v. United Bank of Kuwait PLC*, No. 01 CIV.1290 CSH, 2003 WL 22801918, at *2 (S.D.N.Y. Nov. 24, 2003) (holding motion for attorney’s fees in abeyance because the reasonable amount of fees “not infrequently is bitterly contested”). In any event, the Court cannot resolve this appeal until it resolves the issues in No. 21-36025. Thus, to conserve the resources of Court and parties alike, GEO respectfully requests that the Court hold this appeal in abeyance until it resolves No. 21-36025. GEO will notify this Court promptly upon the issuance of an opinion in that appeal.

If the Court declines to hold this appeal in abeyance, GEO respectfully requests that the Briefing Order be amended to allow filing of the opening brief within 40 days, or any other time within the Court’s discretion, after disposition of the present motion, with the response brief due 30 days thereafter and the reply brief due within 21 days of service of the response brief.

Dated: January 18, 2022

Respectfully submitted,

s/ Michael W. Kirk

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A) and Ninth Circuit Rule 27-1(d) because this motion contains 395 words and is two pages in length, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: January 18, 2022

s/ Michael W. Kirk

Michael W. Kirk

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 18, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: January 18, 2022

s/ Michael W. Kirk

Michael W. Kirk

Attorney for Defendant-Appellant